

REISSUE LITIGATION

In Re Reissue Application and
Reexamination (merged proceeding) of

FOR: PREPARATION AND
TRANSFER SHEET

Patentee: RODERICK THOMPSON

Patent No. 5,472,790

Reissue Serial No.: 09/014,518

Reexamination Control No. 90/004,752

Reissue Filed: January 28, 1998

Reexam Filed: September 17, 1997

Primary Examiner: Krynski

**SECOND SUPPLEMENT TO PETITION
FOR PUBLIC USE PROCEEDINGS**

JUL 22 1998

GROUP 1100

Petitioner has recently obtained additional evidence in regard to the sale and offer for sale of Counter Maid cutting mats by persons associated with Mrs. Gillett, specifically the Declaration of David Phaller of Richmond Technology as to the lay flat characteristics of the sheets supplied by John Stoneman, Inc. This is in addition to the other evidence previously submitted as to the lay flat characteristics of the Counter Maid sheets, i.e., the admission by the patentee and the Counter Maid samples submitted.

The Examiner's attention is also directed to the other evidence submitted by Petitioner in the Protest and Request for Reexamination to consider with the evidence submitted with the public use petitions, establishing nonpatentability under 35USC103. In particular, attention is directed to GB2248177A, which is prior art under 35USC102(b) as to all of the new claims 10-15 submitted by the patentee. All of these claims encompass thickness ranges over 0.030 inches, the upper limit of the original patent application, and thus cannot rely on the filing date of the parent application, but only on

the June 13, 1994 filing date of the second application. These points were set out in the Supplement to the Protest previously filed by Petitioner.

The thickness "means" clauses of claims 10 and 11, if construed as of proper form, would include the ranges recited in the specification, i.e., 0.008 to 0.060 inches in thickness under 35USC112 (6).

GB2248177A was published on April 1, 1992, (previously erroneously stated as January 4, 1994 by petitioner) more than one year prior to June 13, 1994.

As previously pointed out, the Declaration submitted by applicant could not establish prior invention, as the inventor did not invent a cutting sheet thicker than 0.030 inches. Thus the '177 as described in GB 2248177A patent is also prior art under 35USC102(a) as to all of the claims.

The '177A patent clearly teaches the method of use involving cutting and transfer by flexing a polypropylene sheet as thin as 0.0315 inches (see claim 5).

Thus, the prior sales and offer for sale of polypropylene sheets by John Stoneman, Inc. of thicknesses of 0.009, 0.010, and 0.012 inches, and the cutting sheets described in GB2248177A of 0.0315 inches thick for use with the food cutting and transfer method, render all of the pending claims as invalid under 35USC102 or 35USC103.

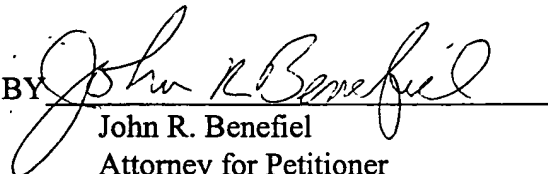
The Examiner's attention is also directed to the Modern Plastic and test data evidence previously submitted concerning the Rockwell hardness and flexural modulus of polypropylene.

Since none of the claims recite an upper size limit, the sale in early December 1991 of larger sized sheets to Schneider Plastics is also anticipating prior art under 35USC102(b). This evidence was presented by petitioner in the original Request for Reexamination, and should be considered here also.

It is noted that new claims 10 and 11 recite "thickness means" which under 35USC112 paragraph 6 is construed as being what is described in the specification, i.e., 0.008 to 0.060 inches thick. These claims thus are invalid over GB2248177A, as well as the Counter Maid prior sales.

Respectfully submitted,

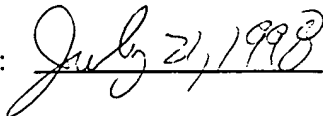
Date: July 21, 1998

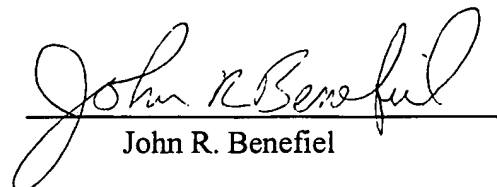
BY 
John R. Benefiel
Attorney for Petitioner
Reg. No. 24,889

CERTIFICATE OF SERVICE

The signature below certifies that a copy of the Second Supplement to Public Use Proceedings; Declaration of David Phaller and all accompanying papers have been served on the patent owner by depositing the documents in an envelope bearing first class postage in an official US. Postal Service depository, on the date set forth below, addressed as follows:

Neil F. Martin
Brown, Martin, Haller & McClain
1660 Union Street
San Diego, CA 92101

Date: 

By: 
John R. Benefiel



Greenville, UT Phone:
513/548-7272
Lakeland, FL Phone:
813/665-6550

FOR CORRESPONDENCE REFER
TO INVOICE NUMBER
No. 27248 # 27248

CUSTOMER'S 1936 DATE 10/31/91 APPROXIMATE
ORDER NO. ENTERED 10/31/91 SHIPPING DATE 12/06/91 VIA SHIP
Carrier Common

INVOICE DATE 12/04/91
DATE SHIPPED 12/04/91
ROUTED Churchhill
Trucking

SOLD TO Schneider Plastics, Inc.
220 Bingham Dr. #105
San Marcos, CA 92069

GROSS WEIGHT 2,797#

SHIP TO: Creative Plastics
6365 Nancy Ridge Road
San Diego, CA 92121

TERMS: NET 30

F.O.B. Greenville, Oh/Collect

QUANTITY ORDERED	DESCRIPTION	UNIT PRICE	QUANTITY SHIPPED	EXTENSION
(APPROX.)	POLYPROPYLENE (9231) EXTRUDED SHEET CLEAR - SMOOTH FINISH			
2,500 lbs.	Extrusion Sheet Size: .010" x 36" x 47"	(4520 shcs) 1.170/lb. 2525#	\$	2954.25
INVOICE TOTAL \$				2954.25

FILE COPY

REISSUE LITIGATION**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Reissue Application and
Reexamination (merged proceeding) of

FOR: PREPARATION AND
TRANSFER SHEET

Patentee: RODERICK THOMPSON

Patent No. 5,472,790

Reissue Serial No.: 09/014,518

Reexamination Control No. 90/(X)4,752

Reissue Filed: January 28, 1998

Reexam Filed: September 17, 1997

Group Art Unit: 1615

DECLARATION OF DAVID PHALLER

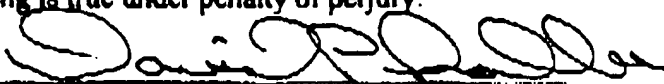
Declarant David Phaller does state that:

1. I am currently employed by Richmond Technology of Redlands, California, and have been employed by that company since at least 1974.
2. I am knowledgeable concerning the production methods used by Richmond in producing extruded plastic sheet over the years of my employment.
3. In the 1970's and later Richmond Technology was a supplier of plastic sheets used for "bacon boards" sold under the trademark "Kleer Kard" by John E. Stoneman, Inc. of Newport Beach, California.
4. In approximately 1981, John Stoneman, Inc. requested delivery of a limited number of special order sheets for a customer of theirs, reportedly for ultimate use as a kitchen cutting sheet.
5. At that time, Richmond Technology was employing polypropylene in extruding Kleer Kard sheets.
6. Richmond Technology extruded the special order sheets for John Stoneman, Inc. using the same material as for Kleer Kard bacon boards.
7. The special order sheets were cut from extruded sheet still hot from the extrusion process and were not cut from stored roll stock.
8. The special order sheets thus had a lay flat characteristic, which was also true of the Kleer Kard bacon boards sold to John Stoneman, Inc.

I declare that the foregoing is true under penalty of perjury.

7-15-98

Date



David Phaller